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## Dear Readers,

Thank you for your continued support of Labhart Miles. We would like to take this opportunity to pass along our very best wishes to you and your families for a happy and prosperous new year.

During the Fall of 2002, Labhart Miles distributed its first newsletter to our clients and contacts as part of our continuing effort to provide quality tax advice and up to date information. Our distribution list at that time was much smaller than it is today! We hope that you continue to enjoy our newsletter, now with its new look. We are also considering offering an electronic version of the newsletter and would appreciate your comments on the small comment card provided (see page four).

To encourage your response, we are offering an opportunity to win a Harry & David's gift at the beginning of January, to be drawn from the cards received by 12/31/07. ●

Upon the completion of the 10/15 busy season, we took the opportunity to publish articles in two professional journals: *The Journal of Multistate Taxation and Incentives* and *The Journal of Green Building*. Excerpts follow:

## California Enterprise Zone Hiring Credit

Bill Labhart provided an article which appeared in the November/December 2007 issue of the *Journal of Multistate Taxation and Incentives*.



“In the combined cases, Appeal of Jessica McClintock No.304497, and Jessica McClintock Inc., No. 304512, on 8/14/07 the California State Board of Equalization (SBE), in a nonprecedential letter decision, reversed the Franchise Tax Board (FTB) and ruled that a worker hired by an employer in a California enterprise zone (EZ) does not have to be economically disadvantaged in order for the employer to be eligible to claim a hiring tax credit for that worker. In the ruling, the SBE unanimously upheld the taxpayers’ claims, in tax years 1998 through 2001, for \$312,000 in tax credits for hiring sixteen employees who were older workers, veterans, or high school dropouts. The overall EZ hiring credit was in excess of \$1.2 million. The FTB had disallowed the disputed credits based on the agency’s interpretation of eligibility for the credit, which is based on eligibility for the federal Job Training Partnership Act (JTPA) (Public Law 97-300 (S.B.2036, 10/13/82); codified at 29 USC section 1501 et seq.

Because the JTPA Program expired June 30, 2000 and was superseded by the Workers Investment Act and is thus no longer in effect, the regulations exclude retroactive voucher applications for employees hired prior to July 2000, who may have qualified under the JTPA. Therefore, unless an employee, hired prior to July 2000, has already obtained a determination of eligibility or was enrolled in JTPA, the Department of Housing and Community Development would not retroactively authorize an EZ hiring credit voucher for that individual.”

(SBE Ruling Eases Requirements to Claim California Enterprise Zone Hiring Credit, William Labhart, Journal of Multistate Taxation and Incentives, Vol. 17/No. 8, Copyright © [2007] Thomson Tax & Accounting)

*Continued on page 3*

### Multi-State Tax Commission (MTC) – Cost of Performance

The MTC, at its annual conference this summer, approved an amendment to its model apportionment regulation addressing the treatment of activities performed by a taxpayer pertaining to “cost of performance” for inclusion of service related sales into a state. The amendment includes in the taxpayer’s cost of performance the payments to an agent or independent contractor for the performance of personal services related to a particular item of income. Previously such costs were not included. The amendment also includes rules for determining when the income-producing activity is attributed to a taxing state. ●

### MTC – Bedfellows with the IRS

The MTC has drafted a memo of understanding with the IRS and states that it will allow the IRS to directly share information with the MTC without having to go through the states. The information will be used to “enhance compliance”. The MTC is awaiting approval from the states. (BNA - Sept 7, 2007) ●

### U.S. Supreme Court & State Taxes

The U.S. Supreme Court has granted certiorari in the following cases:

- *MeadWestvaco Corp. v. Illinois Dept. of Revenue* At issue is whether Illinois may require an Ohio based corporation to treat the gain from the sale of a business segment as apportionable business income for Illinois corporate income tax purposes, on the basis that the asset served an operational function rather than an investment function (as Mead argued in excluding the gain). Mead argues that if Illinois prevails and the gain from the sale of its Lexis/Nexis subsidiary is apportionable, it would mean that all income received by non-domiciliary corporations from subsidiaries or divisions would be subject to apportionment, which is in direct conflict with the Due Process and Commerce clauses of the U.S. Constitution and previous U.S. Supreme Court decisions.
- *Davis v. (Kentucky) Department of Revenue* will be heard by the U.S. Supreme Court this fall. The issue is whether statutory provisions which exempt from income tax any interest income derived from bonds issued by Kentucky, but tax interest income derived from bonds issued by other states violates the Commerce Clause of the U.S. Constitution. ●



## Speaking Out

### Conferences:

#### California Association of Enterprise Zones (CAEZ):

In October, Labhart Miles again sponsored the CAEZ Annual Conference, held in Modesto, CA from October 25 - 26th.



#### 2007 Annual Meeting of California Economic Opportunity Network (CEON):

Labhart Miles continues to advance the interests of our enterprise zone clients through CEON, an advocacy group dedicated to promoting the California Enterprise Zone Program.

#### 2007 ASWA/AWSCPA Joint

**National Conference:** On October 26, Monika Miles presented a tax session with fellow ASWA member, Inez Mello of CCR Group entitled “The Streamlined Sales Tax Project – A Simpler Sales Tax?”

#### Pacific Coast Bankers’ Bank

**Conference:** Look for Labhart Miles at the 2008 PCBB Executive Management Conference in San Francisco March 9 - 12, 2008.

### Community:

**The Labhart Miles team raised over \$22,000** for the American Cancer Society’s annual Making Strides Against Breast Cancer walk, held October 20, 2007 in San Francisco. Thank you to all who contributed again this year! We couldn’t have done it without you.

#### Sponsored Cal CPA Annual Golf

**Outing:** raising scholarship funds for local students.



### Memberships:

**In support of our banking clients,** Labhart Miles has become an associate member of Western Independent Bankers (WIB). Please visit their website at [www.wib.org](http://www.wib.org). ●

## Credits and Incentives for Green Building

**M**onika Miles co-authored (with Professor Annette Nellen of San José State University) an article to appear in the *Journal of Green Building* - winter 2007 edition.

“In considering ways to achieve a cleaner environment, it is not uncommon for policymakers to use tax laws to encourage environmentally-friendly behavior as well as to discourage activities that harm the environment. Increased attention to climate change in the past few years has heightened attention on the need to change our practices that

lead to greenhouse gas emissions. The tax law is frequently suggested and used as a tool for helping to change behavior and reach certain environmental goals.

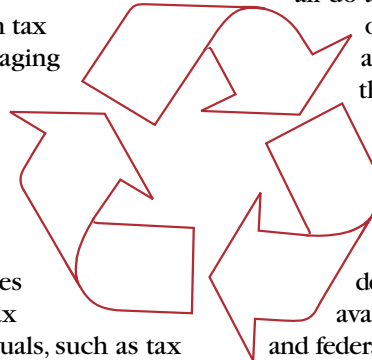
This article focuses on tax provisions for encouraging sustainable, environmentally-friendly building practices, both residential and commercial. While the federal government and several states have energy-saving tax incentives for individuals, such as tax credits for installing solar energy devices in their homes, tax provisions applicable to builders is the focus of this article. The rationale for using the tax law for influencing environmental behavior is covered along with examples of some current federal and state tax rules pertinent to builders.”

The article is a reminder of a few things of note. First, the “green phenomenon” continues to pervade the business and tax landscape.

Perhaps it's a reminder that we can all do a little more to protect our environment. From a business perspective, the article is also an indication of just a few of the credits and incentives (jobs and capital investment based; research and development, etc.) that are available at both the state and federal level. If your company is considering expansion of any kind, a review of available incentives is always a good idea—green or not!

See the full articles in the respective publications or on our website under “*In the News*”. ●

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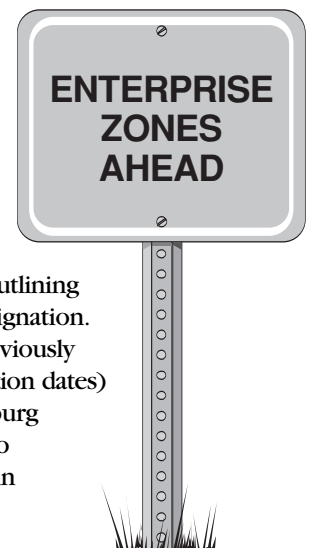
### California Corner

## Enterprise Zones

**New standard vouchering forms** for the EZ Hiring Credit are at last finalized and will be required for all employee vouchering beginning January 1, 2008. Copies of the form will be available before year end on the Housing and Community Development (HCD) website. Once they are final, you can also find them on our website. Previously, the 42 enterprise zones each used a different format for their vouchers.

Regulations, effective 1/1/07, require a uniform approach, but the form has been through several time-consuming levels of review. Franchise Tax Board spokeswoman Susan Maples was recently quoted in BNA as saying that FTB expects that it will be less likely to audit hiring credits claimed under the new regulations on the new forms. We'll keep you posted regarding that issue.

**Eight more zones are expiring in 2008** and communities wishing to be considered for designation (or re-designation) for one of these coveted spots must have met the application deadline of November 16, 2007. Application packets reviewed by HCD include a substantial set of documents outlining reasoning, economic indicators, and myriad support for a community's qualification for a zone designation. Recall that 23 zones expired in 2006 and 2007, and many of those communities that had zones previously applied for a new zone and were re-designated. The 8 zones expiring during 2008 (and their expiration dates) are as follows: Kings County (6/21/08), Los Angeles - Eastside (1/10/08), Oakland (9/27/08), Pittsburg (1/10/08), Santa Ana (6/07/08), Siskiyou County (6/21/08), Stockton (6/21/08) and West Sacramento (1/10/08). HCD expects the announcement of the “winners” of the zone designations to be made in January 2008. ●



**State Tax Solutions**

**Labhart Miles Consulting Group:**

- Member of the California Association of Enterprise Zones (CAEZ)
- Sponsors of the Pacific Coast Bankers' Bank Executive Management Conference
- Editors of the Journal of Multistate Taxation and Incentives
- A wealth of experience in Big 4, Industry, and State Government
- [labhartmiles.com](http://labhartmiles.com)

**Reader Comment Card**

- I would be interested in receiving "States of Affair" in an e-newsletter format.
- I am not interested in the e-newsletter format.

**Additional Comments:** \_\_\_\_\_

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City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (\_\_\_\_\_) \_\_\_\_\_

Email \_\_\_\_\_

Please return a copy of this card to Labhart Miles **no later than 12/31/07** for a chance to win a Harry & David's gift basket. Drawing will be held December 31, 2007!

If you know someone who would be interested in receiving our newsletter, please contact us at [info@labhartmiles.com](mailto:info@labhartmiles.com).

*This newsletter is distributed free of charge to clients and other contacts. It is written in general terms and is not intended to be a substitute for specific tax advice. While reasonable care has been taken in the preparation of this document, Labhart Miles Consulting Group, Inc. accepts no responsibility for errors it may contain or for any losses sustained by any person or entity that relies on it.*

**States of Affair**

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